

Hon. Judge David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, AT TACOMA

LISA C. NEAL, an individual,

Plaintiff,

v.

CITY OF BAINBRIDGE ISLAND, a Municipal
Corporation

Defendant.

NO.: 3:20-cv-06025-DGE

**SECOND AMENDED
COMPLAINT**

JURY DEMAND

Plaintiff Lisa C. Neal ("Neal" or "Plaintiff") brings this action against the City of Bainbridge Island ("COBI") for violation of her constitutionally protected right to political free speech per 42 USC § 1983, for violating her right to equal protection under the law per 42 USC § 1983, for conspiring to deprive Plaintiff of rights and privileges protected by the U.S. Constitution, pursuant to 42 USC § 1983, for defamation *per se*, negligent or intentional infliction of emotional distress, and violation of Washington's Public Records Act RCW 42.56.

I. PARTIES

1.1 Plaintiff is a resident of the City of Bainbridge Island, Kitsap County, Washington.

1.2 COBI is a municipal corporation located in Kitsap County, Washington, organized under the laws of the State of Washington. COBI is an “agency” as defined by RCW 42.56.010(1) and subject to the Public Records Act (“PRA”), RCW 42.56, *et seq.*

II. JURISDICTION & VENUE

2.1 This court has subject matter jurisdiction pursuant to 42 U.S.C. § 1983. The court has ancillary jurisdiction over Plaintiff’s related state law claims.

2.2 The court has personal jurisdiction over the parties.

2.3 Plaintiff has complied with Revised Code of Washington § 4.96.020’s requirement that Defendant municipality COBI be provided 60-days’ notice of the claim for damages.

2.4 Plaintiff has complied with Revised Code of Washington § 7.96.040’s requirement that Defendant be provided an opportunity to correct or clarify the alleged defamation.

2.5 Venue is proper in the Western District of Washington at Tacoma pursuant to 28 U.S.C. § 1391(b)(1) and (2), because Plaintiff and Defendant COBI are located in this district, and because the events giving rise to Plaintiff’s claims occurred in this district.

III. RELEVANT FACTS

3.1 *Introduction* Plaintiff has been a lawyer licensed and in good standing in the state of Washington since 1996, and in Texas (now inactive) since 1992, as well

1 as in the federal district courts of both states, and in the Ninth Circuit Court of
2 Appeals.

3 3.2 Plaintiff served as a Bainbridge Island Municipal Code ("BIMC")
4 Chapter 2.01 citizen volunteer appointed by the City Council to the Island Center
5 Subarea Planning Process Steering Committee ("Committee").

6 3.3 The Committee is a citizen advisory committee formed to create a
7 Subarea Plan for the Island Center Neighborhood Center on Bainbridge Island.

8 3.4 The Subarea Planning Process was initiated when the Council
9 expressed support for moving forward at the April 18, 2017 City Council meeting,
10 with a target date of January of 2018.

11 3.5 Plaintiff was appointed to the Committee by the City Council in the Fall
12 of 2017.

13 3.6 Plaintiff was not told she was being hired by the City when she was
14 appointed, and was not interviewed by the City Manager, the person who hires all
15 personnel for the City, but Plaintiff was instead interviewed by two councilmembers.
16 Committee members were told they were subject to the Open Public Meetings Act,
17 and that they must comply with the COBI Ethics Program.

18 3.7 The Committee elected Plaintiff as the Committee's Vice-Chair in or
19 before February of 2018, in which role she acted until August 14, 2018, when
20 Defendant COBI removed her from the Committee.

21 3.8 Plaintiff was not, and is not, a public figure.

22 3.9 During her tenure as Vice-Chair to the Committee, Plaintiff heard
23 numerous complaints from the community regarding conflicts of interest on the
24 Committee.

25 3.10 During her tenure, Plaintiff advocated for full disclosure of potential
26 conflicts of interest in compliance with COBI's Ethics Program, including the

1 disclosure of ownership of property Committee members were advocating be
2 upzoned as part of the Island Center Subarea Planning Process.

3 3.11 During her tenure, Plaintiff approached then-Councilmember Sarah
4 Blossom numerous times to request her assistance regarding compliance with the
5 COBI Ethics Program.

6 3.12 During Plaintiff's tenure, COBI, COBI Staff, then-City Councilmember
7 Blossom, and Committee Chair Maradel Gale made multiple and repeated erroneous
8 statements of law, and made erroneous references to the COBI Comprehensive Plan,
9 in an effort to have the Committee draw the conclusion that significant expansion
10 and increases in density were required at Island Center.

11 3.13 During her tenure, Plaintiff corrected those misstatements of law and
12 Plan references.

13 3.14 On August 14, 2018, in a public City Council meeting, then-
14 Councilmember Blossom moved to remove Plaintiff from the Committee, using as
15 justification false and stigmatizing statements about Plaintiff. Then-Planning
16 Commissioner Jon Quitslund made false and stigmatizing statements about Plaintiff
17 at the Council meeting. Then-Planning Director Gary Christensen made false and
18 stigmatizing statements about Plaintiff at the Council meeting.

19 3.15 The false and stigmatizing statements were made to retaliate against
20 Plaintiff for her speech, to sideline and diminish her in the community so as to chill
21 and marginalize her speech going forward, and to chill the speech of others who
22 might be inclined to speak out on the same issues.

23 3.16 COBI's acts and the acts of its agents have harmed Plaintiff.

24 3.17 *Background - Community Does Not Want Density* In early 2018, an
25 Island Center Committee survey gave the Island Center community two
26

1 opportunities to vote for additional housing, and the community stated both times
2 that additional housing was “not important.”

3 3.18 At the June 18, 2018 Island Center Subarea Planning Process public
4 meeting, the public was encouraged to place round stickers on posters showing
5 proposed Subarea Planning Process goals with which the public agreed.

6 3.19 Committee member Scott Anderson placed a poster with “Affordable
7 Housing” with the others.

8 3.20 Not one member of the public placed an approving sticker on the
9 “Affordable Housing” poster.

10 3.21 On August 1, 2018, the Committee’s consultant (Maker) reported to the
11 Committee regarding the “sticker” exercise, and initially omitted the report that no
12 one placed a sticker on “Affordable Housing.”

13 3.22 A Committee member requested, and received, confirmation that no
14 one at the public meeting placed a sticker on the poster “Affordable Housing.”

15 3.23 During the Committee’s interim report to the City Council on August
16 28, 2018, the Council was told that the Committee was unlikely to recommend
17 significant expansion of the Island Center zone.

18 3.24 On November 8, 2018, at the Planning Commission meeting where Gale
19 and Sutton reported on the Subarea Planning Process progress, then-Planning
20 Commissioner Quitslund called the community’s desire to restrain housing density
21 “problematic.” He went on: “I want to respect these responses, and we don’t want
22 to impose a plan on – against well-established and well-grounded resistance. But,
23 (sigh), now that Maradel is here, perhaps we can discuss a little bit. What we’re up
24 against, and what the potential is for balancing the potential for medium-density
25 development of res. . . -- development residentially, in and near the Island Center
26 defined boundaries.”

1 3.25 At the November 8, 2018 Planning Commission meeting, Gale told the
2 Planning Commission that a statement offered by Plaintiff, and adopted by the
3 Committee for inclusion in a list of issues and goals for the area, was not, in fact,
4 accepted "by the whole group" but was "just one person's language."

5 3.26 The statement was that a goal of the Subarea Planning Process was: "To
6 Maintain the cool wooded atmosphere enjoyed by the residents of Island Center,
7 development is restricted to current zoning allowances. Undeveloped parcel owners
8 may purchase development rights from owners in the immediate Island Center area
9 in order to increase density."

10 3.27 This goal had been verbatim included in the Survey in early 2018, and,
11 speaking through the stickers, the community stated this goal was "Very Important."

12 3.28 Then-Councilmember Blossom stated that she wondered whether the
13 community would be allowed to "opt out" of the Comprehensive Plan.

14 3.29 The consultant's synopsis of community comment at the February 10,
15 2020 public meeting began with "Vision – No Sewer" and included "Values – No
16 Sewer!"

17 3.30 The consultant's synopsis of community comment at the February 10,
18 2020 public meeting stated a Goal of "NO! No changes to zoning, no increase in
19 density" and in another section "Down zone. No new construction! Leave us alone."

20 3.31 *Background - Pro-Density, Pro-Anderson COBI* When she advocated
21 for initiation of the Subarea Planning Process for Island Center, then-Councilmember
22 Sarah Blossom argued for an earlier start date than that being contemplated
23 "because we already have a plan" and stated it [the plan] was an "urgent need"
24 sought by the Island Center community.

1 3.32 The Plan Blossom referenced was one created by the same Subarea
2 Planning process in 2001, a plan which was soundly rejected by the community,
3 causing that planning effort to end before completion.

4 3.33 The 2001 Plan included a 24.5 acre expansion of the Neighborhood
5 Center and an upzone to the current Neighborhood Center properties, for a total of
6 56 acres in increased density. Planning Commission Minutes for July 24, 2003
7 meeting.

8 3.34 The 2001 Plan included an option that included high density housing
9 along Miller Road.

10 3.35 According to sworn testimony of then-Planning Director Kathy Cook in
11 a lawsuit, the 2001 Plan was discontinued because "much of the surrounding
12 neighborhood was strongly opposed to any expansion of the NSC, and individuals at
13 the meeting were extremely hostile." Case No. C13-5768 RJB, Western District
14 Washington, Dkt. 19.

15 3.36 In approximately 2014-2016, then-Councilmember Blossom had
16 previously strongly advocated for high density housing (75-100 units) on a 13.83
17 acre, publicly owned property known as "Suzuki."

18 3.37 The Washington state Old Growth Commission had confirmed Suzuki
19 contains old growth forest.

20 3.38 Suzuki contains wetlands and a large pond.

21 3.39 None of the proposals supported by then-Councilmember Blossom
22 provided a buffer for the pond, and all invaded the old-growth forest.

23 3.40 Plaintiff joined with others in her community, and was a vocal and
24 consistent opponent of the project, which she believes constitutes an unconstitutional
25 gift of public property to private interests.

1 3.41 In 2014, a developer clear-cut an 8.14 acre property to build a “big box”
2 store shopping center, removing approximately 800 trees.

3 3.42 One of the architects for the project was Charles Wenzlau.

4 3.43 Plaintiff joined with others in her community, and was a vocal and
5 consistent opponent of the project.

6 3.44 Plaintiff wrote a letter to the Bainbridge Review editor specifically
7 calling out a promise regarding the impact of the project made by Charlie Wenzlau to
8 the hearing examiner that was not fulfilled.

9 3.45 On May 14, 2015, a Planning Commissioner asked staff for help to
10 “unlock the Neighborhood Service Center Box.”

11 3.46 At the June 11, 2015 Planning Commission meeting, where proposed
12 amendments to the Comprehensive Plan were discussed, a public commentor
13 objected that the Commission had removed the phrase “preserve rural nature of the
14 Island” from the overriding principles.

15 3.47 At the June 1, 2015 Planning Commission meeting, the Commission
16 discussed the desire to rezone property on its own motion.

17 3.48 At the July 9, 2015 Planning Commission meeting, the Planning
18 Director noted that the Planning Commission had previously recommended that the
19 2001 Plan should be used as the base for any new Plan.

20 3.49 At the July 23, 2015 Planning Commission meeting, Commissioners
21 discussed recommending a Comprehensive Plan amendment that would allow
22 incremental increases to an NSC without going through the Code-required Subarea
23 Planning Process, bypassing that protective legislative component of the Plan.

24 3.50 Maradel Gale and Jon Quitslund were Commissioners in 2015, with
25 Gale leaving the Commission in 2018 and Quitslund leaving the Commission in 2021.

26 3.51 The Island Center Committee was formed in November of 2017.

1 3.52 The Committee has completed its task as of the date of the filing of this
2 Second Amended Complaint.

3 3.53 In 2017, Island resident Scott Anderson was appointed to the
4 Committee.

5 3.54 In 2017, Island resident Maradel Gale was appointed to the Committee.

6 3.55 Anderson and Gale both contacted Senior Planner Sutton and asked
7 how they could apply for the Committee.

8 3.56 Anderson first sought an upzone for a 10-acre property owned by his
9 family that abuts the current Neighborhood Center in 2015.

10 3.57 Anderson's family LLC purchased the 10-acre property in 2015.

11 3.58 Anderson's Comprehensive Plan Amendment Application, submitted
12 June 22, 2015 and dated June 3, 2015, included a Site Plan showing new public
13 storage commercial buildings on the south 5 acres, and a housing development
including 28 units on the north 5 acres of the 10-acre property.

14 3.59 Anderson provided public comment regarding his request to the
15 Planning Commission on June 25, 2015.

16 3.60 Anderson submitted a re-zoning request for the property to the
17 Planning Commission on July 9, 2015.

18 3.61 At the July 9, 2015, Planning Commission meeting, architect Charlie
19 Wenzlau spoke in favor of significant increases in FAR (floor area ratio).

20 3.62 The Planning Commission recommended that Anderson's request be
21 considered as part of a future Special Planning Area process, according to a
22 memorandum drafted by Jennifer Sutton and Kathy Cook (Planning Department)
dated September 10, 2015.

23 3.63 On September 10, 2015, the Planning Commission discussed
24 recommended changes to the Comprehensive Plan that would upzone the Anderson

1 property. Then-Planning Commissioner Quitslund opined that the “history of this
2 application was something to be ashamed of.”

3 3.64 Another property owner in the Island Center area, Andrew Cainon,
4 sought an upzone for his one-acre parcel.

5 3.65 At the June 26, 2019 Island Center Committee meeting, Planning Staff
6 liaison to the Committee, Jennifer Sutton, advocated for upzoning of the Cainon
7 property.

8 3.66 By way of letter dated September 22, 2016, Scott Anderson asked the
9 City Council and the Planning Commission to begin the Subarea Planning Process
10 for Island Center. The letter did not disclose his family’s interest in 10 acres abutting
the Neighborhood Center.

11 3.67 On or about August 8, 2018, then-City Manager Doug Schulze
12 announced his resignation. In a newspaper interview, he stated that City Council
13 members are “essentially volunteers” and should leave policy decisions to the
14 professionals. Schulze also expressed frustration that the Council members
15 sometimes gave greater weight to the opinions of members of the public than to
16 recommendations from City Staff. Schulze, according to the newspaper, called
17 community members who criticized proposed city projects “armchair quarterbacks.”
18 Kitsap Sun August 8, 2018.

19 3.68 Following Plaintiff’s August 14, 2018, removal, in June 2019, Island
20 Center Committee consultant Wenzlau (Charles Wenzlau, a local architect who
21 works for developers) proposed an expansion of about 40 acres of new
Neighborhood Center Property.

22 3.69 At the November 6, 2019 Committee meeting, Island Center Committee
23 consultant Arango stated “this process is supposed to be about growth.”
24

1 3.70 On January 22, 2020, Consultant Arango proposed an expansion of
2 about 70 acres of new Neighborhood Center Property in Island Center.

3 3.71 The Committee rejected both proposals.

4 3.72 In late 2018 or early 2019, the Planning Commission appointed
5 Planning Commissioner Quitslund as Planning Commission liaison to the Island
6 Center Committee.

7 3.73 In what appeared to be an orchestrated discussion, at the May 8, 2019
8 Committee meeting, Gale advocated that the “do-nothing” or “status quo” option
9 previously included in the possible Plans be abandoned.

10 3.74 Quitslund then told the Committee that a “status quo” option would be
11 a “non-starter” with the Planning Commission.

12 3.75 Quitslund also told the Committee that a “status quo” plan would not
13 meet the standard in the Comprehensive Plan.

14 3.76 Planning Director Christensen then weighed in to suggest that “status
15 quo” option would be helpful to illustrate the impact of the proposed changes. This
16 statement contradicted what he had said previously, and contradicted what the
17 public was told at the 2018 public meeting about the possibility of a “status quo” or
18 “do nothing” option for Island Center.

19 3.77 Plaintiff wrote the Committee regarding the incorrect statements, and
20 Quitslund responded on May 27, 2019 with an assertion that Plaintiff was trying to
21 “obstruct” the process.

22 3.78 On October 31, 2021, Jon Quitslund emailed a document to COBI,
23 asking that it be sent to the Planning Commission and the Island Center Committee.
24 In the attached letter, Quitslund claimed that Plaintiff had a “personal grudge”
25 against Scott Anderson, and that Plaintiff had “prevent[ed] that person [Scott
26 Anderson] and others from engaging in a constructive and conclusive discussion of a

1 central issue in the planning process . . . wasting innumerable hours of meeting
 2 time.” Jon Quitslund called Plaintiff’s concerns about disclosures of conflicts of
 3 interest “strained and suspicious.” Quitslund advised that Plaintiff was “cranky”
 4 and “disrespectful of legitimate property rights.” Quitslund misrepresented that the
 5 earlier planning process had not resulted in any finding that the Island Center
 6 residents did not want increased density. Quitslund further misrepresented that the
 7 conclusion that Scott Anderson’s request to begin the Subarea Planning Process
 8 kicked off the Island Center planning process was “utterly false,” based on his
 9 knowledge gained as a Planning Commissioner.

10 3.79 It is not clear how Jon Quitslund, who was not a Planning
 11 Commissioner at the time, saw the email to which he was responding.

12 3.80 *Background - COBI Pushes for Sewer Extension to Island Center* At
 13 several meetings prior to Plaintiff’s removal (e.g. 12/5/17, 2/21/18, 3/21/18,
 14 4/18/18, 7/18/18 and 8/1/18), Sutton and/or Gale commented that sewer
 15 expansion to Island Center would enhance either the Fletcher Bay water quality or
 16 would facilitate the development of small lots in the area, including a large area that
 17 was outside of the Island Center planning area.

18 3.81 At a South Ward meeting on January 26, 2019, then-Councilmember
 19 Blossom stated that septic systems on Fletcher Bay would “fail eventually” and that
 20 bringing sewer to Island Center would solve the problem.

21 3.82 On September 10, 2019, a replacement consultant’s contract was
 22 reviewed by the City Council (“Framework”).

23 3.83 Framework’s subconsultant offered a sewer analysis for \$30,000.

24 3.84 A Committee member spoke to Council during the consideration of the
 25 Contract, and opposed this portion of the Contract, stating the Committee had not,
 26 and was unlikely to, develop a Plan that would require a sewer expansion.

1 3.85 The objecting Committee member noted the Committee could use that
2 money to gain advice on other issues it was considering.

3 3.86 The City Manager promised the Council that the money would not be
4 spent unless and until the Committee developed a draft Plan that required sewer
5 expansion.

6 3.87 Based on the promise, the Council voted to approve the full contract.

7 3.88 The new consultant emailed Senior Planner Sutton and the sewer plan
8 contractor on January 14, 2020, stating "a major unanswered question is whether we
9 can develop a feasible plan to provide sewer service for Alternative 3 since it has
10 more development capacity than any of the alternatives that were explored as part of
11 the general sewer plan. Infrastructure may be a limiting factor in selecting the
preferred alternative."

12 3.89 Senior Planner Sutton responded on January 15, 2020, noting that the
13 City could compel connection by the surrounding area to pay for the sewer.

14 3.90 At the March 4, 2020 Committee meeting, a City Staffer advised the
15 Committee that the sewer analysis "was underway."

16 3.91 The Committee had not yet drafted a Plan.

17 3.92 None of the draft elements to the draft Plan included density sufficient
18 to require sewer expansion.

19 3.93 Plaintiff inquired with the City Manager as to the genesis of the
20 authority for the expenditure, and has not received an answer.

21 3.94 *Misstatements of Law to Justify Growth* During several meetings (e.g.
22 12/5/17, 1/17/18, 2/7/18, 2/21/18 and 4/4/18), Christensen, Sutton, Gale,
23 Anderson and/or Blossom made separate statements to the Committee and the
24 public that the Growth Management Act requires growth, and/or that the
Comprehensive Plan requires that Island Center be expanded and that residential

1 zoning be made more dense than it is now. Then-Planning Commissioner Jon
2 Quitslund made statements to the public and the Committee that growth in Island
3 Center was required by the Comprehensive Plan.

4 3.95 These statements were often made in response to concerns raised by the
5 public and requests that the Island Center area not be excessively developed.

6 3.96 Plaintiff generally attempted to correct these misstatements of the law
7 to the Committee as they occurred, while she was on the Committee.

8 3.97 *Committee Liaison Staff Promotes Growth* From 2019-2020, Staff
9 Liaison Sutton drafted the Committee Report, including a section regarding the
10 public meetings.

11 3.98 Despite the public's placing "no stickers" on the goal of affordable
12 housing in 2018, Sutton's initial drafts included a statement that the community had
13 a high priority for affordable housing.

14 3.99 Despite the community's "word cloud" saying "Leave it Alone" at the
15 2020 public meeting in response to the question "what activities would enhance
16 Island center," Sutton ignored the community's stance in her draft Report.

17 3.100 Sutton failed to include LU 5.2 in the listed Comprehensive Plan
18 sections that were important to consideration of the Committee's Plan. That section
19 allows increases in density only through the transfer of development rights, or
20 through affordable housing.

21 3.101 The Committee issued a proposed Plan in May of 2021, which Plan
22 included upzoning the Anderson property and allowing residential density to be
23 increased from R-2 to R-8.

24 3.102 Three members of the Committee issued a Minority Report, objecting to
25 the expansion of the Neighborhood Center to include the Anderson property, and
26 objecting to the new R-8 housing density.

1 3.103 The Minority Report also objected to the failure to include relevant
2 Comprehensive Plan sections, including Housing Element LU 5.2.

3 3.104 Blossom and others have asserted that higher density is needed to
4 create affordable housing. During 2020, Plaintiff advised the Committee that state
5 law existed that would allow them to mandate that any new residential density
6 created in their Plan be affordable. RCW 36.70A.540.

7 3.105 At the November 23, 2020, Committee meeting, Staff liaison Sutton
8 recommended to the Committee that they not utilize the statute.

9 3.106 The consultant, whose sub-consultant is Charlie Wenzlau, a local
10 architect and developer, advised the Committee to not change the zoning allowances
11 to require affordable housing, but to use the existing Code.

12 3.107 The existing applicable Code section, BIMC 18.12.030(D), allows bonus
13 density for actions other than the building of affordable housing.

14 3.108 *Objection Regarding Failure to Disclose Conflicts* The COBI Ethics
15 Program ("Program") requires that all committees include a standing agenda item
16 for disclosure of possible conflicts of interest. Program, Art. II, Section J.

17 3.109 The Program precludes action by any committee member who (among
18 other disqualifications) has a "significant financial or private interest in that matter . .
19 . ." Program, Art. II, Section D. 1. a.

20 3.110 Section D. 1. does not apply to committee members who were
21 appointed "based on ownership of property or interest in a business located in a
22 certain area of the City . . . provided that the member fully discloses the basis for the
23 conflict of interest under Subsection (1) during each meeting of the City Committee . .
24 . . and [where] the City Committee . . . votes to allow the member to participate in the
25 discussion or the vote" Program, Art. II, Section D. 3. a. and b.

1 3.111 The Program does not exempt the Island Center Committee members
2 from this obligation.

3 3.112 At the beginning of the first Committee meeting on December 5, 2017,
4 Committee member Scott Anderson ("Anderson") disclosed that he and his family
5 own a ten acre parcel adjacent to the Neighborhood Center, for which he had
6 previously gone to the Planning Commission seeking an upzone, and that he sought
7 an upzone for his family's property through the Island Center Subarea Planning
8 Process.

9 3.113 Also at the first meeting, Committee member Maradel Gale ("Gale" or
10 "Chair") disclosed that she and others on the Planning Commission at the time
11 Anderson approached that body for the upzone had wanted to "help" Anderson, but
12 were told that they could not make the zoning change until the Subarea Planning
13 Process was completed.

14 3.114 The recording of the first meeting on December 5, 2017, began after the
15 Committee members introduced themselves, and the portion of the meeting
16 referenced above is not present on the publicly available recording.

17 3.115 At the January 17, 2018 meeting, a member of the public asked about
18 the apparent conflicts of interest with respect to the two Committee members who
19 sought to upzone their own properties.

20 3.116 Planning Director Gary Christensen ("Christensen") advised those
21 present that, so long as the Committee members had disclosed the interest to the
22 Council, the potential conflict of interest did not affect their ability to vote on the
23 process.

24 3.117 Plaintiff requested at the March 7, 2018 Committee meeting that the
25 Committee include the standard conflict of interest disclosure agenda item in future
26 Committee meetings.

1 3.118 In response to Plaintiff's request, Christensen told the Committee and
2 the public that, because the Committee is an advisory committee, the conflict
3 disclosure was not really an issue.

4 3.119 All citizen committees provide recommendations.

5 3.120 The only exception to that general rule is the Salary Commission.

6 3.121 As of March of 2018, Gale had been nominated for the Chair position by
7 Committee member Anderson, and the Committee voted her Chair.

8 3.122 At the March 21, 2018 meeting, whether and how to disclose conflicts
9 was again discussed.

10 3.123 At the March 21, 2018 meeting, COBI Staff member liaison to the
11 Committee, Jennifer Sutton, advised that the City Attorney told her he did not think
12 disclosure was necessary because, for one reason, the Committee makes
13 recommendations, and is not a decision maker.

14 3.124 Staff and Chair Gale suggested making a general statement to the effect
15 that the Committee members in general own property or businesses in or near Island
16 Center.

17 3.125 On April 4, 2018, following further discussion, the Committee expressly
18 agreed to place conflicts of interest disclosures on the Agenda.

19 3.126 Chair Gale refused to call the Agenda Item "Conflict of Interest
20 Disclosure," however, stating she would place on future Agendas discussion of
21 "Statements of Interest."

22 3.127 At this time, Chair Gale was also a member of the Ethics Board for the
23 City.

24 3.128 Plaintiff objected, and requested that the Agenda item be entitled
25 "Conflict of Interest Disclosure" or similar, to comply with the Code [here, meaning
26 the Ethics Program].

1 3.129 Later Committee Agendas showed “Conflict Disclosure” along with
2 Call to Order and Agenda Review as the first item of business, but the minutes reveal
3 that “statements of interest” were called for by the Chair.

4 3.130 During the June 6, 2018, Committee meeting, Plaintiff again noted that
5 the Program requires “conflict of interest” disclosures, not “statements of interest,”
6 and that the Program further requires that the Committee actually vote on whether
7 to allow the conflicted member(s) to discuss or vote on the topic from which they,
8 personally, could potentially benefit.

9 3.131 After Staff liaison Sutton’s report that the City Attorney had instructed
10 that no conflict of interest disclosure was necessary, Plaintiff called the City Attorney
11 to obtain his advice.

12 3.132 It took several weeks to connect with the City Attorney.

13 3.133 Plaintiff advised the City Attorney, Joe Levan, of Staff Sutton’s relayed
14 advice from him.

15 3.134 Levan told Plaintiff he “did not say that” (what Plaintiff reported Staff
16 Sutton had reported he’d said).

17 3.135 Plaintiff asked for advice as to what to tell people who were concerned
18 about the conflicts of interest.

19 3.136 Levan told Plaintiff that he did not provide advice on the Ethics
20 Program, only on the state law, and that committee members are not subject to state
21 law.

22 3.137 More than one year after this conversation, and following Plaintiff’s
23 removal from the Committee (discussed below), the City Attorney wrote to Plaintiff
24 regarding an unrelated issue on August 23, 2019.

25 3.138 In that written communication, Levan implied that Plaintiff had lied
26 about the prior conversation.

1 3.139 Levan refused to discuss any issue with Plaintiff on the telephone or in
2 person.

3 3.140 In his 2019 email communication, the City Attorney's recollection was
4 that he advised Plaintiff that mere ownership of property or businesses in the area
5 was not a conflict of interest, because the Code required such an interest in most of
6 the Committee members.

7 3.141 The City Attorney did not explain in the email why the Ethics Program
8 requirements did not apply to the Committee.

9 3.142 The City Attorney's implication that Plaintiff lied was presented in the
10 context of Plaintiff requesting a telephone call regarding her review of some
11 documents she had requested under the Public Records Act.

12 3.143 Plaintiff planned to request some physical accommodations relative to
13 the document review, and wished to do so in a telephone call, not in an email.

14 3.144 The City Attorney's implied claim that Plaintiff lied was coupled with
15 his demand that any future communication be in writing, and he refused to discuss
16 anything on the telephone with Plaintiff.

17 3.145 Rather than place her personal information in the public record in order
18 to request the accommodation, Plaintiff forewent review of the documents requested.

19 3.146 The City Attorney's implied claim that Plaintiff lied was disclosed to a
20 third party, the City Clerk.

21 3.147 There was no legitimate basis for including a third party on the City
22 Attorney's email claiming Plaintiff had lied.

23 3.148 The City Attorney, Levan, used information gained in his conversation
24 with his former client (Plaintiff, as member of a citizen committee seeking legal
25 advice regarding the Committee's obligations under the Program, was the City
26 Attorney's client for that purpose) *against* Plaintiff in a separate, adversarial, context.

1 3.149 The City Attorney, Levan, may have violated the Rules of Professional
2 Conduct by so using confidential communications against Plaintiff in a later,
3 adversarial, context. RPC 1.9(c)(1) and (2).

4 3.150 Plaintiff was caused distress by the City Attorney's communication,
5 was impeded in her work, loss of sleep, and including at least one nightmare on
6 August 27, 2019, regarding the allegations.

7 3.151 Levan negligently or intentionally caused Plaintiff distress.

8 3.152 Plaintiff requested intervention from the Mayor (Medina, at the time),
9 who forwarded the issue to the City Manager.

10 3.153 Approximately three months later, on November 15, 2019, Plaintiff
11 received an email from the City Manager, Morgan Smith, on the issue.

12 3.154 Smith refused to take any action regarding the City Attorney's
13 communication.

14 3.155 As discussed above, while Committee Agendas after April 4, 2018
15 reflected a standing agenda item for "Conflict Disclosure," the Chair continued to
16 call for any "changes in status" or similar, and no Committee member fully disclosed
17 the interest in upzoning his or her own property, and the Committee did not comply
18 with the Program by voting on whether to allow participation.

19 3.156 Returning to the June 6, 2018, Committee meeting, Plaintiff reported the
20 content of her telephone call with the City Attorney to the Committee, and she re-
21 urged the Committee's full compliance with the Ethics Program.

22 3.157 Later, during 2019, Chair Gale and the rest of the Ethics Board
23 recommended to the City Council that it change the Program to exempt members of
24 committees such as the Island Center Committee from disclosing conflicts of interest.

25 3.158 Council member Blossom explained in an August 9, 2019 email that the
26 Board, and not she, recommended this change to the Program.

1 3.159 In that August 9, 2019 email, Blossom acknowledged that the
2 Committee members have a potential conflict of interest, and that it should be
3 disclosed.

4 3.160 This statement by Blossom conflicted with the City Attorney's assertion
5 to Plaintiff in his August 23, 2019 email that the Committee members did not have a
6 conflict of interest.

7 3.161 This Ethics Board's recommendation and request that Council eliminate
8 the conflicts disclosure requirement confirmed the requirement's existence, as well as
9 that Chair Gale's and Staff's prior advice to the Committee, that no such disclosure
10 was required, was inaccurate.

11 3.162 During the Ethics Program review process that spanned many months,
12 Plaintiff communicated with the Council, and especially with Mayor Medina, and
13 explained what the existing conflicts are: Committee members who own land near
14 the Neighborhood Center wish the Committee to "upzone" their property, they have,
15 and continue to argue for, the "upzone," and they were anticipated to vote on the
16 "upzone."

17 3.163 Mayor Medina expressed his opinion that this specific type of conflict is
18 something he would want to know before voting on any Plan presented by the
19 Committee (Council has the last word on any upzone recommendation by the
20 Committee.).

21 3.164 The Council ultimately rejected the Ethics Board's recommendation
22 that the Island Center Committee (and others like it) be exempted from conflict of
23 interest disclosures.

24 3.165 On December 16, 2020, Chair Gale, seeing Plaintiff present at the Island
25 Center meeting, publicly introduced the conflicts of interest disclosure agenda item
26 by saying "Here you go, Lisa."

1 3.166 To date, certain Committee members have consistently failed to
2 disclose that they own property that they advocate be upzoned as part of the Island
3 Center Subarea Planning Process.

4 3.167 The Committee has further failed to comply with the Program, which
5 requires a formal Committee vote be taken to allow those members who have
6 disclosed a conflict to participate in discussion and/or voting on items that
7 potentially affect their property or interests.

8 3.168 Plaintiff has brought these failures to the attention of the Committee, to
9 Council, to Mayor Medina, and to the City Manager (because Mayor Medina
10 forwarded the alert to her).

11 3.169 The City Manager Smith responded that the Committee was already
12 disclosing “conflicts” in order to satisfy Plaintiff.

13 3.170 At the August 6, 2019 City Council meeting, the Council discussed
14 possible changes to the Ethics Program.

15 3.171 Then-Councilmember Blossom described Plaintiff’s concerns about the
16 lack of conflict disclosures as a “problem with a person” and claimed disclosures had
17 occurred at every single meeting.

18 3.172 *Procedural Objections* Prior to her removal, Plaintiff had noted that no
19 minutes were recorded for the first meeting, that of December 5, 2017.

20 3.173 The Committee had held a vote at the December 5, 2017 meeting.

21 3.174 Plaintiff provided draft proposed minutes for that meeting, as well as
22 for the January 17 and February 7 meetings at the meeting of February 21, 2018.

23 3.175 Chair Gale and Sutton advised the Committee that minutes were not
24 required because the meetings are recorded.

25 3.176 This position is reflected in the minutes for the February 21, 2018
26 meeting.

1 3.177 Chair Gale advised the draft minutes would be “appended” to the
2 minutes for the record, as well.

3 3.178 Plaintiff’s draft proposed minutes were not appended to any minutes
4 recorded for any meeting.

5 3.179 Plaintiff’s draft proposed minutes were not appended to the minutes of
6 the meeting during which they were proposed.

7 3.180 On April 18, 2018, during Plaintiff’s tenure on the Committee, Plaintiff
8 alerted the Committee to its failure to draft a Work Plan, as required by the
9 applicable BIMC.

10 3.181 Chair Gale advised a Work Plan was not needed.

11 3.182 Plaintiff offered to obtain and bring the Work Plan from the prior
12 Subarea Planning Process (one conducted in 2001) to the next meeting for review.

13 3.183 At a later meeting, Christensen advised the Committee that, not only
14 had he already drafted the required Work Plan, but also that it had been presented to
15 the City Council, and the City Council had already approved it.

16 3.184 A copy of a timeline document was provided to the Committee.

17 3.185 Similarly, in early 2018, other Committee members requested input to
18 the Request for Qualifications (RFQs) to be issued for a Committee consultant, and
19 were told they would have that opportunity.

20 3.186 At or soon after the time this promise was made, Christensen, Sutton,
21 Gale and the Planning Commission liaison, had already issued the RFQs,
22 interviewed applicants, recommended consultants to Council, and the Council had
23 hired consultants.

24 3.187 This secret action overruled or disregarded the Committee’s December
25 5, 2017 vote to postpone this hire until the Committee could provide input into what
26 sort of expertise was needed, in the Committee’s estimation.

1 3.188 The Committee was told the consultants had already been hired at the
2 March 21, 2018 meeting. Several Committee members objected to the process that
3 had resulted in their selection.

4 3.189 One of the consultants hired was Charles Wenzlau.

5 3.190 Charles Wenzlau was on the Affordable Housing Task Force (AHTF),
6 Jennifer Sutton was Staff liaison to the Affordable Housing Task Force, and Sarah
7 Blossom was the City Council liaison to the Affordable Housing Task Force.

8 3.191 During AHTF meetings, Wenzlau had promoted pushing density out of
9 Winslow into outlying areas like Island Center.

10 3.192 The AHTF Final Report did not suggest using state law to require
11 affordable housing when upzoning, but instead advocated for mandatory
12 inclusionary zoning, which required only 10% affordable units.

13 3.193 Wenzlau was and/or is advising former Committee member Scott
14 Anderson regarding the options for development of Anderson's family's 10 acres.

15 3.194 At the April 4, 2018 Committee meeting, Christensen admonished the
16 Committee for its lack of progress, and told the Committee that it might have to
17 begin meeting weekly.

18 3.195 Prior to the next meeting (April 18, 2018) and at the meeting, Plaintiff
19 objected to Christensen's admonishment.

20 3.196 At the April 18, 2018 Committee meeting, Plaintiff also raised a point of
21 order.

22 3.197 The point of order was regarding the Committee's prior vote to
23 postpone Vision Statement drafting, and the presence on the Agenda of "draft Vision
24 Statement," despite that vote.

25 3.198 Plaintiff noted that proper procedure suggested that the Committee
26 should take another vote before proceeding.

1 3.199 Plaintiff's point of order was disrupted by Chair Gale's repeated
2 interruptions.

3 3.200 The Committee eventually held a vote, and decided to draft the Vision
4 Statement without waiting for the result of the Survey.

5 3.201 The minutes for the April 18, 2018 meeting fail to reflect this vote.

6 3.202 On June 13, 2018, Plaintiff communicated via email with members of
7 the public who were persons known to her to be interested in growth,
8 environmental, and fair government issues. As required, she sent the email from her
9 COBI email address.

10 3.203 Among other issues, Plaintiff noted that the Staff, not the Committee,
11 had drafted the Code-required Work Plan.

12 3.204 Among other issues, Plaintiff noted that Staff, Gale and the Planning
13 Commission liaison had hired the consultants with no input from the Committee,
14 and despite the Committee's vote to briefly delay hiring consultants. Plaintiff further
15 noted the refusal by Sutton to record the vote in the minutes for the December 5, 2017
16 meeting.

17 3.205 Among other issues, Plaintiff noted that Gale had stated her long-held
18 desire to get the process started and that Gale had admitted at the December 5, 2017
19 meeting that the Planning Commission (on which body she sat) had wanted to help
20 Committee member Anderson with the upzone of his family's Island Center 10 acre
21 property.

22 3.206 Among other issues, Plaintiff noted that Anderson nominated Gale for
23 Chair, in a vote Sutton postponed from the prior meeting when Anderson was
24 absent.

25 3.207 Among other issues, Plaintiff advised that the Comprehensive Plan
26 (Housing Element LU 5.2) required that any increase in residential density in

1 Neighborhood Centers be accomplished through transfer of development rights or
2 bonus density for affordable housing.

3 3.208 Among other issues, Plaintiff reported that Planning Director
4 Christensen had told the Committee and public that no conflict of interest could, or
5 did exist, that Staff Liaison Sutton said the same thing, and that Chair Gale refused to
6 place Conflicts of Interest on the Committee's agendas, despite City policy being to
7 the contrary.

8 3.209 *Removal of Plaintiff From Committee* Returning to Plaintiff's removal
9 from the Committee on August 14, 2018, Plaintiff was not provided notice of the
10 impending discussion.

11 3.210 While the August 14, 2018, City Council meeting Agenda included a
12 motion to remove a citizen from a committee, the Agenda item did not name the
13 person to be removed, or the committee from which a person was to be removed.

14 3.211 Plaintiff received a telephone call from Council member Ron Peltier on
15 August 14, 2018, to advise that he had contacted Council member Blossom and been
16 told Plaintiff's removal was not on the Agenda.

17 3.212 Peltier advised Plaintiff that if her removal were discussed, it would be
18 helpful for him to be able to relay that Plaintiff would try to be "more diplomatic" in
19 the future.

20 3.213 Plaintiff stated that she always tried to be diplomatic and would listen
21 to any advice on the subject.

22 3.214 Plaintiff reported to Peltier her July 11, 2018 telephone conversation
23 with Blossom (discussed below), in which call Blossom had promised to address
24 Plaintiff's concerns, and in which call Plaintiff had promised to bring any future
25 concerns to Blossom.

1 3.215 Plaintiff later asked the Mayor, Kol Medina, who placed the item on the
2 Agenda.

3 3.216 According to him, Mayor Kol Medina does not recall who placed the
4 motion to remove Plaintiff on the Agenda for August 14, 2018.

5 3.217 Council member Sarah Blossom, who was also the City Council's
6 liaison to the Committee, told Plaintiff (on August 15, 2018) she did not ask that the
7 Agenda item be placed on the Agenda, and that she did not have notice of its
8 presence prior to August 14, 2018.

9 3.218 On August 14, 2018, BIMC 2.16.210.E.1. governed the Subarea Planning
10 Process, and that code section lacked any procedure for removal of a committee
11 member. On December 11, 2018, the City Council considered a change to that code
12 section to include a removal procedure. Then-Mayor Medina stated in the open
13 meeting that the purpose of the change was due to Council's realization during
14 Plaintiff's removal that the City had no process for removing people from a
15 committee. The revision to BIMC 2.16.210.E.1. added a removal process, and did not
16 strike out any preexisting removal process. Then-Mayor Medina explained his
17 position regarding the revisions: "And, so I erred on this side [giving the Mayor the
18 initial power of removal] . . . because I wanted to avoid the council sitting up here
19 and having a personal conversation about someone that might be, you know,
20 disparaging to them. So, this would be a way to not have to have that conversation.
21 That's why I put it in here, but, you know, it's an important point." The code
22 changes were passed into law on January 8, 2019, under Ordinance No. 2019-01.

23 3.219 No public hearing, testimony, or vote was required to effect Plaintiff's
24 removal from the Committee.

1 3.220 COBI Council did not follow the removal procedure provided by the
2 COBI Code because the Code did not provide a process for citizen removal from a
3 committee.

4 3.221 COBI Council instead held a public hearing without notice to Plaintiff
5 on August 14, 2018, which was televised and recorded, and which provided a public
6 platform for some, including Council members and COBI staff, as well as members
7 of the public, to provide their opinions regarding Plaintiff in that permanent public
8 forum.

9 3.222 At the August 14, 2018 City Council meeting, then-Mayor Kol Medina
10 raised the issue of Plaintiff's removal from the Committee by telling the public that
11 "anyone serving on any of the committees serves at the pleasure of the Council and
12 we can remove them if we feel like they are, for whatever reason, disrupting the
13 committee, not acting appropriately. We have reasons to, some councilors anyway
14 have expressed reasons to believe this person [Plaintiff] should be removed from the
15 Committee."

16 3.223 Following the introduction wherein the Mayor stated that one in the
17 Plaintiff's position, who had been "disrupting the Committee" and "not acting
18 appropriately," could be removed, he asked for a motion to remove Plaintiff,
19 identifying her by name.

20 3.224 This combination of statement and action implied to the public that
21 Plaintiff had been "disrupting the Committee" and "not acting appropriately" to the
22 point that her behavior now necessitated her removal.

23 3.225 Recitation of such grounds was unnecessary to comply with the
24 pertinent BIMC section.

25 3.226 Council member Sarah Blossom (Blossom) moved to remove Plaintiff
26 from the Committee.

1 3.227 Blossom claimed to not have known the item would be on the Agenda.

2 3.228 Blossom stated her reasons for moving to remove Plaintiff: “we’ve had
3 some Committee members resign because of [Plaintiff’s actions/behavior],” and that
4 Plaintiff had refused to meet with the Planning Director, Gary Christensen.

5 3.229 Both statements were false.

6 3.230 Regarding the assertion that Committee members resigned “because
7 of” Plaintiff, the Committee members who resigned prior to August 1, 2018, resigned
8 for reasons other than Plaintiff’s actions, words or behavior.

9 3.231 One Committee member wrote on May 31, 2018 to resign for “health
10 issues.”

11 3.232 The other Committee member wrote on June 4, 2018 to resign due to
12 the Committee’s having made “little meaningful progress” to date.

13 3.233 Staff member Jennifer Sutton reported the resignations to the
14 Committee during a meeting, and had previously reported one resignation in an
15 email.

16 3.234 Plaintiff was aware from conversations and email communications both
17 while on the Committee and after her removal that the claim that either person who
18 resigned had done so “because of” Plaintiff was false.

19 3.235 For example, on July 11, 2018, Plaintiff called Blossom to discuss
20 Plaintiff’s concerns about the process being followed by the Committee, including
21 what Plaintiff believed were inaccurate statements of the law, and the Committee’s
22 ongoing failure to disclose conflicts of interest.

23 3.236 In the July 11, 2018 telephone call with Blossom, Plaintiff expressed
24 concern that Christensen seemed hostile and might be attempting to make
25 Committee work for Plaintiff sufficiently uncomfortable that she would quit.

1 3.237 Blossom responded (paraphrased) “we do not need any more
2 resignations.”

3 3.238 Blossom quickly spoke again, and appeared concerned that she had
4 implied the two members had resigned because of Plaintiff’s actions, saying
5 (paraphrased) “I’m not saying they quit because of you.”

6 3.239 Because Blossom had volunteered during the July 11, 2018, call that the
7 prior resignations were not “because of” Plaintiff, and because Plaintiff was aware,
8 through her Committee participation, of the true reasons for those resignations,
9 Plaintiff wrote to Blossom on February 27, 2019 and set out the two conflicting
10 statements from the July 11, 2018 call, and Blossom’s statement at the August 14, 2018
11 City Council meeting implying to the public that Plaintiff was to blame for the
12 resignations, requesting Blossom provide an explanation.

13 3.240 Blossom did not respond to the February 27, 2019 email.

14 3.241 Plaintiff followed up on March 6, 2019, and Blossom responded: “I
15 didn’t respond and I don’t plan to.”

16 3.242 At the City Council meeting on August 14, 2018, Planning Director
17 Gary Christensen also argued in support of removal.

18 3.243 Christensen admitted under questioning by a Council member that he
19 could not say that other members of the Committee had resigned “because of”
20 Plaintiff’s participation.

21 3.244 Regarding the second asserted ground for Plaintiff’s removal, Plaintiff’s
22 alleged refusal to meet with the Planning Director, Christensen had requested an in-
23 person daytime private meeting with Plaintiff on April 18, 2018, after 2:00 p.m., to
24 discuss Plaintiff’s expressed concern (email dated April 17, 2018) that he had
25 overridden a Committee vote by unilaterally changing the next Committee Agenda.

1 3.245 The issue there was that, as reflected in the Minutes for the April 18,
2 2018 meeting, the Committee had voted in the April 4, 2018 meeting to issue a survey
3 to the public for input on a list of possible issues before drafting a Vision Statement.
4 The April 4, 2018 minutes were never amended as voted in the April 18, 2018
5 meeting.

6 3.246 The Committee's Agenda, therefore, did not include drafting the Vision
7 Statement for the next meeting.

8 3.247 Christensen ignored that vote and placed the Vision Statement drafting
9 back on the Agenda.

10 3.248 Plaintiff did not refuse to meet with Gary Christensen regarding her
11 concern.

12 3.249 Instead, Plaintiff responded by email on April 17, 2018, to the request,
13 thanking the Planning Director, but advising she felt it would be best if
14 communication occurred in the public record.

15 3.250 Blossom pressed Plaintiff to attend an in-person meeting, advising she
16 planned on also attending (April 17, 2018 email).

17 3.251 In a responsive email of the same date, Plaintiff reiterated her desire to
18 have any meeting with all (the Committee) in attendance, and on the public record.

19 3.252 As such, Plaintiff expressed the desire to meet in public, not private,
20 and never refused to meet with Christensen.

21 3.253 As such, Plaintiff expressed the desire to meet in a forum where the
22 communications would be recorded, and Plaintiff never refused to meet.

23 3.254 Christensen did not respond to Plaintiff's request that their discussion
24 take place, as Plaintiff had requested.

1 3.255 At the April 18, 2018, Committee meeting following the email exchange
2 between Plaintiff and Christensen, Christensen did not bring forward any discussion
3 with Plaintiff, about Plaintiff, or about Plaintiff's concerns.

4 3.256 At the August 14, 2018 City Council meeting, Blossom further
5 supported her motion to remove Plaintiff from the Committee by asserting that
6 "we're at risk of losing our Chair" [Maradel Gale].

7 3.257 Upon questioning by another Council member, Blossom admitted
8 Plaintiff had not been warned that Plaintiff's behavior could result in her removal
9 from the Committee.

10 3.258 Plaintiff had previously spoken personally with Blossom (herself an
11 attorney) regarding the Committee's failure to disclose conflicts.

12 3.259 Based on recollection, Plaintiff had emailed Blossom previously
13 regarding the Committee's failure to disclose conflicts.

14 3.260 Plaintiff initiated the telephone call that took place on July 11, 2018.

15 3.261 On July 11, 2018, during their private telephone call, Blossom promised
16 to address Plaintiff's concerns.

17 3.262 Blossom requested that Plaintiff come to her with any future concerns.

18 3.263 Plaintiff agreed to come to Blossom with any future concerns.

19 3.264 Blossom at no time, whether on July 11, 2018 or at any other time,
20 warned Plaintiff that she was in danger of being removed from the Committee.

21 3.265 Blossom brought up her conversation with Plaintiff on July 11, 2018 at
22 the next Committee meeting (July 18, 2018), but that portion of the meeting focused
23 on Scott Anderson's complaint that Plaintiff had sent an email about her concerns to
24 members of the public using her City email address.

25 3.266 Plaintiff was unable to attend the July 18, 2018 meeting, and she had
26 alerted Blossom that she could not attend during the July 11, 2018 telephone call.

1 3.267 Plaintiff attended the next Committee meeting, on August 1, 2018.

2 3.268 Plaintiff's concerns were not addressed at the August 1, 2018 meeting.

3 3.269 Plaintiff raised no complaints at the August 1, 2018 meeting.

4 3.270 Plaintiff was not warned of the impending removal at the August 1,
5 2018 meeting.

6 3.271 The status of finding new members to replace those who had resigned
7 was discussed at the August 1, 2018 meeting.

8 3.272 Plaintiff's removal from the Committee was not discussed at the
9 August 1, 2018 meeting.

10 3.273 On August 10, 2018, Plaintiff communicated with Staff regarding the
11 Committee's prior request for a traffic study, a request for any updates to the Work
12 Plan, and requested contact information for the consultants to obtain copies of the
13 "table forms" from the public meeting, which contained detail about public concerns
14 and comments. Plaintiff received no response to this request.

15 3.274 To the best of Plaintiff's recollection, and based on her records, Plaintiff
16 had no other contact with the Committee, the Staff or Council member Blossom.

17 3.275 No warning was provided to Plaintiff in the August 10, 2018
18 communications.

19 3.276 Further, at the August 14, 2018 City Council meeting, the Mayor
20 inexplicably permitted/invited public comment on Plaintiff's removal.

21 3.277 Then-Planning Commissioner and current Councilmember, Jon
22 Quitslund, not identifying himself on the record as a COBI Planning Commissioner,
23 and admitting he had no personal knowledge of Plaintiff, claimed Plaintiff was
24 abusive ("just ugly, and totally inappropriate") to COBI Staff liaison to the
25 Committee, Senior Planner Jennifer Sutton.

1 3.278 Planning Commissioner Quitslund stated that he'd "heard things that
2 were upsetting" to him "because they seemed to be threatening a kind of dysfunction
3 in a very touchy and very important process."

4 3.279 Quitslund went on to state that it "seemed to be the case that there's just
5 so much disruption and so much blocking of the description of where we're going
6 and how, and, and what's at stake"

7 3.280 Quitslund closed his televised/recorded speech by agreeing with
8 Plaintiff's removal from the Committee, and then suggesting that Plaintiff's
9 behavior/action "seems irrational."

10 3.281 Council had previously implemented a rule prohibiting *ad hominem*
11 attacks during public comment or among Council members.

12 3.282 This rule had been enforced against Council members and public
13 speakers in the past.

14 3.283 Quitslund's comments violated the Council rule.

15 3.284 The Mayor did not halt, or otherwise interrupt, Quitslund's speech
16 regarding Plaintiff.

17 3.285 The Mayor did not make any statement that could have diminished the
18 adverse impact of Quitslund's speech.

19 3.286 Quitslund was later appointed the Planning Commission's liaison to
20 the Committee.

21 3.287 The BIMC provides that the Committee's final recommended Plan next
22 moves to the Planning Commission for public hearing and commentary.

23 3.288 Quitslund told the Committee in early 2019 that a no- or low- growth
24 plan for Island Center would violate the Comprehensive Plan.

1 3.289 Quitslund told the Committee in early 2019 that any no- or low-growth
2 Plan would be a “non-starter” with the Planning Commission (the next stop for the
3 draft Plan).

4 3.290 Quitslund later (January of 2019) told Plaintiff that he had no personal
5 knowledge supporting his comments regarding her made on August 14, 2018.

6 3.291 Quitslund later (January of 2019) told Plaintiff that his “friend of many
7 years,” Maradel Gale, relayed to him the information that he had presented to the
8 City Council as true.

9 3.292 Just prior to a Committee meeting in early 2019 (following Plaintiff’s
10 removal), Maradel Gale was heard to comment as she read something on her cell
11 phone, which, given that Plaintiff had sent an email to the Committee just before the
12 meeting, could have been an email from Plaintiff to the Committee, “[S]he is just a
disaster for this committee.”

13 3.293 At the August 14, 2018 City Council meeting, the Council voted 5-2 to
14 remove Plaintiff from the Committee.

15 3.294 Also at the August 14, 2018 City Council meeting, the Council
16 discussed removing or demoting a member of the Environmental Technical Advisory
17 Committee (“ETAC”).

18 3.295 The ETAC committee member, who had been previously warned
19 regarding his criticism of other members, was demoted from Chair and was not
removed.

20 3.296 Plaintiff was singled out for different treatment than the ETAC
21 Committee member.

22 3.297 The Council members other than Blossom who voted to remove
23 Plaintiff made it clear they had no knowledge whether the statements by others were
24 true, or not.

1 3.298 Several Council members who voted to remove Plaintiff expressly
2 stated they were so voting to “support” Blossom, or because Blossom, as Council’s
3 liaison to the Committee, “advised” removal.

4 3.299 Following the August 14, 2018 City Council meeting, Plaintiff heard
5 from one Councilmember who stated he “felt really bad” about how things were
6 handled.

7 3.300 Blossom called Plaintiff on August 15, 2018, to advise her that she had
8 been removed from the Committee the night before.

9 3.301 Later, Plaintiff reviewed the August 14, 2018 Council meeting tape, and
10 saw that during the August 14, 2018 Council meeting, the Mayor offered to attend
11 the call to Plaintiff.

12 3.302 This suggestion, made before the public, created the implication to the
13 public that Plaintiff’s reaction would be severe, and that Blossom would need “back
14 up.”

15 3.303 Blossom declined the assistance.

16 3.304 Further, at the August 14, 2018, City Council meeting, Council member
17 Nassar expressed concern about Plaintiff’s attendance as a member of the public at
18 future meetings, and that “firing” Plaintiff could “exacerbate the problem.”

19 3.305 Both the Mayor’s offer of “help” when communicating with Plaintiff
20 about her removal, and Nassar’s assumption that Plaintiff’s behavior was sufficiently
21 concerning so as to warrant barring her from future public meetings, confirms that
22 the impression left with Council and the public regarding Plaintiff was that she is
23 irrational, violent, or otherwise not a person that should be allowed at a public
24 government meeting.

25 3.306 Nassar’s concern was dismissed by Blossom.

1 3.307 During the August 15, 2018 telephone call with Plaintiff, Blossom
2 asserted that she had not known about the Agenda item to remove Plaintiff, and had
3 not wanted to vote for the motion to remove Plaintiff.

4 3.308 In the telephone call, Blossom did not reveal that it was she who had, in
5 fact, made the motion to remove Plaintiff.

6 3.309 Plaintiff did not have questions for Blossom during the call.

7 3.310 During the August 15, 2018, telephone call, Blossom volunteered to
8 Plaintiff: "I do not think it (the removal) was because you are anti-development."

9 3.311 The City Manager at the time of Plaintiff's tenure on the Committee
10 was Doug Schulze.

11 3.312 At the time of Plaintiff's removal, the City's government culture was
12 pro-growth, and failed to embrace public participation in government.

13 3.313 The practice at the time of Plaintiff's removal was for the City Council
14 meeting Agenda to be set through conference between the Mayor and the City
15 Manager.

16 3.314 On August 18, 2018, Plaintiff watched the videotape of the City Council
17 meeting where she was removed. She was caused embarrassment and distress at the
18 unsupported and false attacks made, unnecessarily, on her in a recorded public
19 forum, and at the thought that her current or future employer and clients could form
20 an adverse opinion of Plaintiff's personality, capacity, and ability to function as an
21 attorney, as a result of the things said about Plaintiff. In the following weeks,
22 Plaintiff suffered from significant sleeplessness, worry and distress. The
23 sleeplessness aggravated medical conditions suffered by Plaintiff.

24 3.315 Plaintiff suffered worry that her current contracted employer, who
25 resides on Bainbridge Island, would believe the false statements, and that permanent
26 damage would be caused to the employment relationship and, consequently, her

1 income stream, as well as to her professional standing in the Bainbridge Island and
2 Seattle legal communities.

3 3.316 Also at the August 14, 2018, City Council meeting, a member of a
4 different committee was demoted for “performance” issues.

5 3.317 That committee member was not removed from the committee, but was
6 demoted from the position of Chair.

7 3.318 That committee member later filed an Ethics Complaint, and the Ethics
8 Board issued an Advisory Opinion, No. 2018-02.

9 3.319 In Opinion No. 2018-02, the Ethics Board noted that the complainant
10 (like Plaintiff) had not been notified that his communications could result in
11 demotion, had not been provided notice of the City Council meeting, and had not
12 been provided the opportunity at that meeting to correct any factual misstatements
about himself.

13 3.320 The Ethics Board concluded with a recommendation:

14 It is incumbent upon the elected official to meet with the committee
15 member and discuss what constitutes appropriate behavior. In the
16 instant case, it is not clear that such discussions were held. Normal
17 standards of ethical behavior as they relate to respect for citizens,
18 fairness in the application of process, and recognition of the
19 contributions of citizen committee members, may have been
20 disregarded. This can be a problem for the city, as it sends a message to
other citizens that their service on a city committee may subject them to
hurtful public rebuke and reprisal without due process – and who
wants to set themselves up for that? . . . The City Council must take
steps to establish a better process for dealing with situations such as this
– a process that is fair, equitable, transparent, and respectful of the
citizens who volunteer for the city.”

21 Opinion No. 2018-02, pp. 4-5.

22 3.321 Shortly after August 18, 2018, following her review of the meeting,
23 Plaintiff contacted the City Council and requested that the section of the August 14,
24 2018 meeting tape regarding Plaintiff be removed from the tape, or that a correction

1 be made. Plaintiff received no response, other than the opinion by one Council
2 member that he/she considered removal or correction unlikely. COBI was again
3 asked to correct the record when Plaintiff sent a draft complaint to City Council in
4 approximately May of 2020. COBI was put on notice of Plaintiff's claims when she
5 served a Tort Claim notice on August 13, 2020. COBI did not respond to either
6 communication. In October 2020, Plaintiff forwarded a demand letter to the City that
7 included a request for a tolling agreement to the City in an effort to explore non-
8 monetary settlement options (a correction of the record). Following that letter, the
9 City's outside counsel contacted Plaintiff, but COBI refused to toll the statute of
10 limitations to allow discussion of a non-monetary resolution.

11 3.322 Following Plaintiff's removal, and further following a fourth
12 resignation from the Committee, the Council re-stocked the Committee with four
13 persons: 1) an architect; 2) a builder; 3) a Seattle planner; and 4) a member of Kol
14 Shalom synagogue, which congregation seeks to continue to use the City-owned lot
15 next to their building for parking.

16 3.323 **Blackballed** In May, 2020, Plaintiff applied for appointment to an
17 open seat on the City Council.

18 3.324 The local newspaper ran a story that highlighted Plaintiff's removal
19 from the Committee and repeated the false claims made about her at the August 14,
20 2018 meeting.

21 3.325 The news article included a stated opinion that was not attributed to
22 any person, and which was not available from the meeting tape.

23 3.326 Plaintiff's contracted employer advised he had seen the story.

24 3.327 Plaintiff requested correction from the newspaper, but did not receive a
25 response.

1 3.328 No correction was run, and Plaintiff was not selected for the Council
2 seat.

3 3.329 Following her removal from the Committee, Plaintiff continued to
4 attend the Island Center Committee meetings as a member of the public.

5 3.330 While the Committee had previously (approximately April of 2018)
6 voted to allow public comment "per topic," the Committee Chair, Maradel Gale,
7 and/or Staff had unilaterally amended this practice. At the time of Plaintiff's
8 removal, limited public comment was allowed only at the end of the meeting, after
9 the Committee had already discussed and decided issues.

10 3.331 Plaintiff's ability to meaningfully participate in the Island Center
11 planning process, as compared to her participation as a member of the Committee,
12 was therefore limited, restricted, or moot.

13 3.332 Plaintiff has been "blackballed" from COBI land use and important
14 committees.

15 3.333 Plaintiff has applied for a position on the Ethics Board three times.

16 3.334 Plaintiff served as a Justice on her law school's Honor Court while she
17 was also a member of the Law Review, and is otherwise qualified.

18 3.335 After Plaintiff interviewed the third time, in March of 2020, with
19 Councilmember Schneider and Councilmember Hytopoulos, COBI re-opened
20 applications without explanation.

21 3.336 Plaintiff again was not appointed.

22 3.337 The Chair of the Ethics Board resigned in January of 2021.

23 3.338 The departing Ethics Board Chair advised Plaintiff she had
24 recommended that Plaintiff be named to the Board as her replacement. The seat
25 remains open as of the filing of this Second Amended Complaint.
26

1 3.339 Also, following her removal, Plaintiff twice applied for an open
2 Planning Commission seat (November of 2020 and June of 2021), and was not
3 selected.

4 3.340 The then-chair of the Planning Commission, alleging problems with
5 Plaintiff's reputation, argued against Plaintiff's appointment during a sub-committee
6 discussion of the applicants.

7 3.341 That then-Chair of the Planning Commission has since left the Planning
8 Commission to begin a business promoting development, which will include
9 affordable housing on Bainbridge Island.

10 3.342 Prior to leaving the Commission, that then-Chair voted to recommend
11 an ordinance that would allow bonus density to developers with a 50% requirement
12 for affordable housing, rather than 100%, a decision that favored developers.

13 3.343 *Disparate Treatment* On June 21, 2021, Plaintiff requested recusal of an
14 Ethics Board member with regard to "conflict of interest" Ethics Complaints filed by
15 Plaintiff against two Island Center Committee members, including Scott Anderson,
16 and the affected Ethics Board member stated in the public meeting that Plaintiff's
17 request was racist, sexist, and a "micro-aggression." The Board member was not
18 disciplined, much less removed, and she did not recuse herself, as requested.

19 3.344 In contrast to COBI's treatment of Plaintiff, a Salary Commissioner
20 threatened another Commissioner with suit in or about April of 2021, and was not
21 disciplined, much less removed from the Commission.

22 3.345 On April 8, 2021, then-Planning Commissioner Jon Quitslund told the
23 Planning Commission that "persons" (known by many if not all of those on the
24 Planning Commission to be a reference to Plaintiff) had intimidated the Island Center
25 Committee, that Plaintiff had sown "doubt and discord" by her speech, that her
26 public comments were "mischief," that Plaintiff "misinformed" the Island Center

1 committee, that Plaintiff had engaged in “manipulative behavior,” and was not
2 always “fair and square.” Quitslund sought permission to present his own views to
3 the Island Center Committee, implying he would get them back on track. The
4 Planning Commission Chair advised him that he was not to get “involved in the
5 discussion.”

6 3.346 Plaintiff complained of Commissioner Quitslund’s comments shortly
7 after April 8, 2021, and he was not disciplined or removed from the Commission.

8 3.347 On May 23, 2021, Plaintiff responded to a telephone call from Jon
9 Quitslund, and asked why Quitslund had called Plaintiff a manipulative mischief
10 maker during the April 8, 2021 Planning Commission meeting. Quitslund did not
11 deny that he was referencing Plaintiff, and stated “Scott Anderson has had legitimate
12 interests and you have consistently tried to quash them.”

13 3.348 In June of 2021, Plaintiff was not chosen for appointment to the
14 Planning Commission by a committee formed for the purpose of selecting the
15 appointees, in part due to the negative input from the then-Planning Commission
16 Chair, whose comments reflected concerns about Plaintiff’s “reputation.”

17 3.349 In recognition of Jon Quitslund’s improper acts in connection with the
18 Island Center Subarea Planning Process in May and June of 2021, the Planning
19 Commission “did away with” liaisons to other committees.

20 3.350 On his last day as a Planning Commissioner, June 30, 2021,
21 Commissioner Quitslund wrote from his private email account to the Planning
22 Commission to attack Plaintiff, who had written to the Commission regarding some
23 of its deliberations regarding the Island Center Plan, then before it for consideration.

24 3.351 Among other attacks, Quitslund called Plaintiff’s concerns “B.S.”
25 Quitslund characterized Plaintiff’s concerns about conflicts of interest on the
26 Committee as “harping on perceived conflicts of interest.” These retaliatory actions

1 violated Plaintiff's First Amendment Rights of free speech and petition and
2 constituted defamation.

3 3.352 As a result of COBI's agents' actions, Plaintiff has suffered and
4 continues to suffer damage to her reputation in her profession and her community.

5 3.353 On July 8, 2021, a Planning Commissioner misunderstood a comment
6 made by Plaintiff in public comment and stated it was "offensive, no one said
7 anything about being white." That Commissioner later apologized to Plaintiff
8 outside of the public record for the misunderstanding. Plaintiff objected in a later
9 Planning Commission meeting during public comment, but the Commissioner was
10 not disciplined, much less removed, for the public personal attack on Plaintiff.

11 3.354 On or about July 14, 2021, Jon Quitslund and the Planning
12 Commissioner referenced in the prior paragraph publicly exchanged a pleasantry
13 about the July 8, 2021, attack on Plaintiff, with Quitslund saying "hey that was a
14 great zinger you did to Lisa Neal." The Planning Commissioner responded, "I'm
15 from New York."

16 3.355 On or about October 31, 2021, Quitslund wrote to the Planning
17 Commission and City Council and alleged Plaintiff is "disrespectful of legitimate
18 property rights," has a "personal grudge" against one member of the committee, and
19 that Plaintiff (somehow, despite her removal from the committee more than three
20 years before) "prevent[ed] that person and others from engaging in a constructive
21 and conclusive discussion of a central issue in the planning process." Quitslund
22 alleged Plaintiff was "obstructive" and "wasted innumerable hours of meeting time
23 and many months on the calendar." Quitslund alleged Plaintiff's statement that the
24 Island Center process was begun when Scott Anderson asked for it to begin was
25 "utterly false."

1 3.356 In or about November 1, 2021, Jon Quitslund and Councilmember
2 Leslie Schneider discussed making sure Scott Anderson received a “fair shake”
3 regarding his family’s property. Jon Quitslund alleged in a written communication
4 between the two that Plaintiff was “malicious” in an apparent attempt to
5 undermine/marginalize Plaintiff, and to convince the reader that Plaintiff’s concerns
6 were illegitimate, or otherwise unworthy of consideration.

7 3.357 In that November 1, 2021 email, Quitslund states that his preference is
8 providing subsidized housing to households that make more than 80% of the
9 Bainbridge Island median income, and he thanked Councilmember Schneider for her
10 voting consistent with that view.

11 3.358 *Public Records Act* During the Pandemic, Committee meetings were
12 conducted by “Zoom.”

13 3.359 Materials reviewed by the Committee at meetings were sometimes, but
14 not always, provided with Agenda packets for meetings.

15 3.360 On December 16, 2020, Plaintiff requested copies of the “Zoom”
16 meetings of the Island Center Subarea Planning Process Steering Committee.

17 3.361 More than five days later, on December 31, 2020, COBI responded that
18 the Island Center “Zoom” meetings were not recorded, due to “City Policy.”

19 3.362 COBI amended the response later the same day to advise that the
20 meetings, both video and audio, were in fact recorded, but that the video portion of
21 the recording was not retained, nor uploaded.

22 3.363 COBI did not provide the reason for the delayed response.

23 3.364 A video link for the full meeting (video and audio) that took place on
24 December 16, 2020, had been provided in response to the public records request on
25 December 18, 2020.

3.365 COBI did not produce the video portion of the recordings for any prior meeting.

3.366 Following Plaintiff's inquiry, COBI confirmed in an email posted to the public records portal that the video portion of each prior "Zoom" meeting had been created, but that it was deleted following the creation of the document.

3.367 COBI has failed to file approved minutes for the Island Center meetings for the dates September 30, 2020, October 28, 2020 and November 23, 2020.

3.368 COBI has never recorded minutes for the December 5, 2017 meeting.

3.369 RCW 42.30.030 requires that minutes for all regular and special meetings (except executive sessions) be recorded and provided for public inspection.

IV. CAUSE OF ACTION - 42 U.S.C. § 1983

4.1 Plaintiff incorporates the factual allegations found in paragraphs 3.1-3.369, and incorporates the same as though fully stated herein.

4.2 *First Amendment Rights* Plaintiff was engaged in a Constitutionally protected activity when she raised questions, expressed opinions, objected to process violations, objected to misstatements of the law or objected to misstatements of the Comprehensive Plan.

4.3 Defendant's actions were taken under the color of state law, and were calculated to, and did, pursuant to 42 USC § 1983, violate Plaintiff's right to participate in government and attempt to persuade others, and effectively punished her for her exercise of her right to free speech and political speech, in violation of the United States Constitution.

4.4 Defendant's actions against Plaintiff would have chilled a person of ordinary firmness from continuing to engage in the protected activity.

1 4.5 Defendant's purpose, according to Sarah Blossom on August 14, 2018,
2 in removing Plaintiff was expressed as prioritizing the "health and functioning of the
3 Committee over this person's participation in it." Defendant's agent Gary
4 Christensen provided input that "there hasn't been full support of the process,"
5 "there's been some decisiveness [sic]" "at the point of being argumentative." Gary
6 Christensen provided his opinion that he did not "always see that [respectful
7 commentary] from this individual" and that he "found that frustrating."
8 Councilmember Blossom closed her commentary by asserting that "of course people
9 can still come and speak their mind . . . and I would say it's not about what she's
10 speaking or her point of views [sic], it's um, more how she interacts with the other
11 committee members and with staff." Plaintiff's engagement in this protected activity
12 was a substantial or motivating factor in the Defendant's conduct.

13 4.6 Defendant was obligated to protect, not impede, Plaintiff's right to raise
14 concerns regarding multiple misstatements of law, the repeated failure to disclose
15 conflicts of interest, departures from proper process, and the Staff overriding of
16 Committee votes, regardless of whether such concerns made other Committee
17 members "uncomfortable," and regardless of whether discussion of the concerns
18 allegedly slowed down the Committee's meetings, and/or the planning process. The
19 desire for a "smooth process" does not trump Plaintiff's, or anyone's, Constitutionally
20 protected rights.

21 4.7 Defendant's actions were intentional and conducted with malice, or
22 done with reckless or callous indifference to Plaintiff's federally protected rights, to
23 punish and silence her (and, potentially, others) for correcting Defendant's
24 representatives' misstatements of law and violations of procedure, as well as for

1 insisting on the disclosure of potential conflicts by those charged with serving the
2 citizens of Bainbridge Island.

3 4.8 Defendant's acts have caused Plaintiff emotional distress and
4 reputational injuries, for which Plaintiff seeks damages.

5 4.9 *Fourteenth Amendment Rights* In addition to violating Plaintiff's
6 rights under the First Amendment to the U.S. Constitution, and/or retaliating against
7 Plaintiff as described above, or in the alternative, Defendant's acts and the acts of its
8 agents further violated Plaintiff's right to Equal Protection under the laws, violating
9 the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

10 4.10 Plaintiff has a liberty interest in her standing and associations in the
11 community and in her freedom to engage in political discourse.

12 4.11 On August 14, 2018, Plaintiff was singled out for different treatment
13 from another committee member, who was demoted from Chair, and not removed.

14 4.12 On August 14, 2018, April 8, 2021, June 30, 2021, and at other times,
15 COBI and its agents made stigmatizing statements to the public about Plaintiff and
16 her actions. All of COBI's agents were acting under color of state law.

17 4.13 The statements were untrue, COBI and its agents knew the statements
18 were untrue, or acted with reckless disregard as to their truth or falsity, with
19 indifference to Plaintiff's constitutional rights, and were published with actual
20 malice.

21 4.14 If, as is denied, COBI removed Plaintiff because she was "disruptive"
22 (among other, similar, allegations as set out in the Facts), Plaintiff, as Vice-Chair of
23 the Island Center Committee, and the ETAC Chair were similarly situated on August
24 14, 2018.

1 4.15 Plaintiff was a class of one, and was intentionally treated differently
2 from others similarly situated, specifically the member of the ETAC committee who
3 had been previously warned about his behavior and who was not removed from the
4 ETAC committee on August 14, 2018.

5 4.16 COBI's and its agents' acts violated clearly established rights of which a
6 reasonable state official would have known.

7 4.17 After August 14, 2018, other committee and board members engaged in
8 actions that should have resulted in removal, and did not.

9 4.18 Following August 14, 2018, COBI's and its agents' actions were
10 undertaken in order to punish Plaintiff and to undermine/marginalize Plaintiff and
11 to prevent her participation in government.

12 4.19 There was no rational basis for the difference in treatment.

13 4.20 COBI's and its agents' actions were committed in bad faith, vindictive,
14 malicious, and undertaken for an improper purpose, based upon an illegitimate
15 animus toward Plaintiff.

16 4.21 As shown by the differential treatment of Plaintiff, COBI's action in
17 removing Plaintiff would not have been taken against Plaintiff, absent the
18 illegitimate animus.

19 4.22 COBI and its agents intended to retaliate against Plaintiff for her views
20 regarding growth, for her publicly expressed concerns regarding the Island Center
21 Committee's continued lack of compliance with the COBI Ethics Program, and to
22 retaliate against Plaintiff for her stated concerns regarding the Subarea Planning
23 Process, generally, as well as to benefit certain Island Center Committee members
24

1 who sought to upzone their own properties through their own inadequately
2 disclosed roles in the Committee's work.

3 4.23 COBI's and its agents' actions were done with the intent to injure
4 Plaintiff.

5 4.24 *Conspiracy* Further, or in the alternative, COBI and its agents
6 conspired and agreed with others to deprive Plaintiff of a constitutional right, free
7 speech, and/or equal protection under law.

8 4.25 COBI and its agents Sarah Blossom, Gary Christensen, Jennifer Sutton,
9 Maradel Gale, Jon Quitslund, Doug Schulze, Kol Medina, Charles Wenzlau and Scott
10 Anderson, among others, acted in furtherance of this conspiracy.

11 4.26 These persons conspired to prevent Plaintiff's speech regarding the
12 applicable law and Comprehensive Plan sections and to prevent Plaintiff's speech
13 regarding Scott Anderson's conflict of interest and the requirement that he fully
14 disclose same, including his desire to acquire an upzone of his family's property.

15 4.27 Sarah Blossom, Gary Christensen, Jennifer Sutton, City Attorney Joseph
16 Levan, Maradel Gale, Jon Quitslund, Scott Anderson, Kol Medina, and then-City
17 Manager Doug Schulze conspired to remove Plaintiff without notice, in public, using
18 as a basis "facts" known to them to be false.

19 4.28 As such, Sarah Blossom, Gary Christensen, Jennifer Sutton, City
20 Attorney Joseph Levan, Kol Medina, Maradel Gale, Jon Quitslund, Scott Anderson
21 and then-City Manager Doug Schulze conspired to deprive Plaintiff of equal
22 protection under the laws, as there was no requirement that such removal happen in
23 public.

1 4.29 Further, Sarah Blossom, Gary Christensen, Jennifer Sutton, City
2 Attorney Joseph Levan, Kol Medina, and then-City Manager Doug Schulze conspired
3 to deprive Plaintiff of equal protection under the laws, by moving or supporting
4 Blossom's motion to remove Plaintiff, rather than reprimanding and/or demoting
5 Plaintiff from her Vice Chair position, as was done to the Chair of another committee
6 at issue on the August 14, 2018 Council agenda.

7 4.30 Maradel Gale and Jon Quitslund acted in furtherance of the conspiracy
8 when Maradel Gale prompted Jon Quitslund to make the untrue statements about
9 Plaintiff on August 14, 2018, when he publicly addressed Council during the
10 scheduled meeting to denounce Plaintiff.

11 4.31 City Attorney Joseph Levan acted in furtherance of the conspiracy to
12 deprive Plaintiff of her constitutionally protected rights when he defamed her in
13 2019, alleging in a writing published to a third person that Plaintiff had been
14 untruthful about a conversation Levan had with Plaintiff.

15 4.32 In 2019 and 2020, Sarah Blossom, then-City Manager Doug Schulze and
16 City Attorney Joseph Levan acted in furtherance of the conspiracy when they argued
17 to current Council members against Plaintiff's appointment to various committees.

18 4.33 Then-Planning Commissioner Jon Quitslund acted in furtherance of the
19 conspiracy when he characterized Plaintiff as a manipulative, misleading mischief
20 maker in his April 8, 2021 statement during a Planning Commission meeting.

21 4.34 On June 30, 2021, then-Planning Commissioner Jon Quitslund acted in
22 furtherance of the conspiracy when he dismissed Plaintiff's concerns about conflicts
23 of interest as "harping on perceived conflicts of interest" and called (on July 1, 2021)

1 Plaintiff's concern about the Commission's potential plan to form a non-public
2 subcommittee to revise the Island Center Plan "B.S."

3 4.35 Former Planning Commissioner Jon Quitslund acted in furtherance of
4 the conspiracy when he made statements in a letter sent to the Planning Commission
5 on or about October 31, 2021, in which he alleged Plaintiff is "disrespectful of
6 legitimate property rights," has a "personal grudge" against one member of the
7 committee, and that Plaintiff (somehow, despite her removal over three years before)
8 "prevent[ed] that person and others from engaging in a constructive and conclusive
9 discussion of a central issue in the planning process." Quitslund alleged Plaintiff
10 was "obstructive" and "wasted innumerable hours of meeting time and many
11 months on the calendar." Quitslund alleged Plaintiff's statement that the Island
12 Center process was begun when Scott Anderson asked for it to begin was "utterly
13 false."

14 4.36 Jon Quitslund and Councilmember Leslie Schneider acted in
15 furtherance of the conspiracy on or about November 1, 2021, when they discussed
16 making sure Scott Anderson received a "fair shake" regarding his family's property.
17 Jon Quitslund alleges that Plaintiff was "malicious" in an attempt to undermine
18 Plaintiff and convince the reader that Plaintiff's concerns were illegitimate.

19 4.37 In that November 1, 2021 email, Quitslund states that his preference is
20 providing subsidized housing to households that make more than 80% of the median
21 income, and he thanked Councilmember Schneider for her voting consistent with
22 that view.

1 4.38 COBI's and its agents' acts injured Plaintiff. Plaintiff was deprived of
2 the right of free speech. Plaintiff was deprived of the right to equal protection under
3 the laws.

4 **V. CAUSE OF ACTION - DEFAMATION**

5 5.1 Plaintiff incorporates the allegations found in paragraphs Plaintiff
6 incorporates the factual allegations found in paragraphs 3.1-3.369, and incorporates
7 the same as though fully stated herein.

8 5.2 COBI, by and through its agents Kol Medina, Gary Christensen,
9 Maradel Gale, Jon Quitslund and Sarah Blossom, defamed Plaintiff by publishing
10 false and injurious information and implication regarding Plaintiff to third parties
11 under a Washington State claim of common law defamation. Plaintiff served on the
12 Committee as a citizen volunteer, and was not a public figure. Defendant enjoys no
13 immunity for these acts.

14 5.3 As the statements tended to harm Plaintiff in her profession and
15 alleged she is irrational, behaved "totally inappropriately" and was "ugly" with staff,
16 adversely implicating her mental state and fitness to practice law, these acts
17 constituted defamation *per se*. These statements were intended to, and did, further
18 Jon Quitslund's now-known plan to promote upzoning of the Scott Anderson
19 property.

20 5.4 Defendant intended to bar or limit Plaintiff's participation in
21 government by making/allowing these false statements, and the statements were
22 unnecessary. As there was no procedure in place for removal of a committee
23 member on August 14, 2018, Plaintiff's removal need not have been done in a public
24 forum. Then-Mayor Medina later admitted when a procedure was added after

1 Plaintiff's removal that the purpose of the change was to prevent disparaging
 2 committee members in a public forum. The statements, which, by their nature
 3 injured Plaintiff personally, as well as in her professional capacity as an attorney,
 4 were made out of malice.

5 5.5 The false statements subjected Plaintiff to contempt or ridicule.

6 5.6 The false statements damaged Plaintiff in an amount to be proven at
 7 trial.

8 5.7 Plaintiff has complied with Revised Code of Washington 7.96.040, and
 9 Defendant refuses to correct the defamation.

10 **VI. CAUSE OF ACTION - NEGLIGENT OR INTENTIONAL INFLICTION OF**
 11 **EMOTIONAL DISTRESS**

12 6.1 Plaintiff incorporates the factual allegations found in paragraphs 3.1-
 13 3.369, and incorporates the same as though fully stated herein

14 6.2 Defendant, by and through its agents Gary Christensen, Kol Medina,
 15 Maradel Gale, Jon Quitslund, Joe Levan and Sarah Blossom, negligently or
 16 intentionally inflicted emotional distress on Plaintiff.

17 6.3 The legislative history regarding the changes to BIMC § 2.16.210.E.1
 18 establishes that COBI and its agents knew that their actions could harm people.

19 6.4 Defendant's actions damaged Plaintiff in an amount to be proven at
 20 trial.

21 **VII. CAUSE OF ACTION – VIOLATION OF PUBLIC RECORDS ACT**
 22 **RCW 42.56**

23 7.1 Plaintiff incorporates the factual allegations found in paragraphs 3.1-
 24 3.369, and incorporates the same as though fully stated herein.

1 7.2 The video recorded “Zoom” meetings are public records as defined by
2 RCW 42.56.010(3) and (4), as they were “video recordings,” and these records are
3 therefore subject to production. No exemption to production applies.

4 7.3 RCW 42.56.080 provides that “agencies . . . shall, upon request for
5 identifiable public records, make them promptly available to any person.”

6 7.4 RCW 42.56.520 provides: “Within five business days of receiving a
7 public record request, an agency . . . must respond by either 1) providing the record;
8 2) providing an [internet link]; 3) acknowledging that the agency . . . has received the
9 requests and providing a reasonable estimate of the time the agency will require to
10 respond to the request; or 4) denying the public record request.”

11 7.5 COBI violated the PRA by withholding records responsive to the
12 request that are not exempt from production.

13 7.6 COBI violated the PRA by not safeguarding, storing, cataloging, and
14 retaining public records and for allowing the loss and destruction of public records.

15 7.7 Plaintiff has been harmed by the deprivation of relevant, timely and
16 important government records regarding a land use committee’s activity.

17 7.8 Plaintiff is entitled to reasonable attorney’s fees, all costs, and a
18 statutory penalty of \$100 per record per day from the date of destruction.

19 **VIII. CAUSE OF ACTION – VIOLATION OF RCW 4.24.510**

20 8.1 Plaintiff incorporates the factual allegations found in paragraphs 3.1-
21 3.369, and incorporates the same as though fully stated herein.

22 8.2 Plaintiff was immune from liability for her communications regarding
23 inaccurate statements of law, the failure of some Committee members to disclose
24 conflicts, and objections regarding process.

1 8.3 COBI did not sue Plaintiff for her protected speech, but COBI used its
2 substantial power differently, penalizing Plaintiff for her protected speech by
3 publicly shaming and removing her from the committee. Such strategic actions, if
4 filed in court, are termed "SLAPP suits." Washington has recognized that such suits
5 and actions "are designed to intimidate the exercise of First Amendment rights and
6 rights under Article I, section 5 of the Washington state Constitution" and that the
7 "United States Constitution protects advocacy to government, regardless of content
8 or motive, so long as it is designed to have some effect on government decision
9 making." RCW 4.24.510 Notes re Intent.

10 8.4 Plaintiff is entitled to recovery under RCW 4.24.510, including but not
11 limited to reasonable attorneys' fees and statutory damages of \$10,000.

12 **TRIAL BY JURY DEMANDED**

13 Plaintiff demands trial by jury.
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PRAYER

WHEREFORE, Plaintiff prays that she be awarded the following relief against Defendant:

1. Actual Damages;
2. Statutory Damages;
3. Punitive Damages as may be allowed under the law;
4. Attorney Fees and Costs incurred in this action; and
5. Such other and further relief as the Court may deem just and

proper.

DATED: January 11, 2022.

NEAL FIRM, PLLC

/s/ Christopher L. Neal
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Attorney for Plaintiff Lisa Neal

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2022, I electronically filed the foregoing with the Clerk of the Court using the EM/ECF system, which will send notification of such filing to the following:

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Audrey M. Airut Murphy, WSBA #56833
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DATED: January 11, 2022

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